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Filing date: **10/14/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183588
Party	Plaintiff Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc
Correspondence Address	Susan Upton Douglass Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lui-docket@fzlj.com
Submission	Motion to Compel Discovery
Filer's Name	James D. Weinberger
Filer's e-mail	jweinberger@fzlj.com, jjones@fzlj.com, kchow@chinahk-ip.com
Signature	/s/ James D. Weinberger
Date	10/14/2009
Attachments	Motion to Compel (F0528263).PDF (57 pages)(2445034 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

YOUNG & CO.'S BREWERY, PLC,

Opposer,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.

Applicant.

Opposition No. 91183588

OPPOSER'S MOTION TO COMPEL

Because Applicant Shandong Joyoung Household Electrical Appliance Co., Ltd. (“Applicant”) failed to respond to discovery and has made no effort to excuse or justify its failure, Opposer Young & Co.’s Brewery, plc (“Opposer”) brings this motion to compel.

Applicant’s complete disregard for the deadlines in this proceeding are causing prejudice to Opposer. Opposer served its discovery requests sufficiently in advance of the discovery close date to allow it time to serve follow-up discovery if necessary. Applicant’s unilateral decision not to respond to discovery denies Opposer that opportunity. Accordingly, because Applicant’s wholesale failure to comply with its discovery obligations, Opposer, pursuant to Rule 2.120(e) of the Trademark Rules of Practice and Rule 37(a) of the Federal Rules of Civil Procedure, hereby moves the Trademark Trial and Appeal Board for an order: (1) holding that Applicant has waived its objections to Opposer’s first set of Discovery Requests; (2) compelling Applicant to respond to Opposer’s first set of document requests and interrogatories without objection and to produce all responsive documents within ten days of the Board’s Order on this motion; and (3) ordering that judgment will be entered against Applicant as a discovery sanction should it fail to

comply with the Board's order. Opposer further requests that the Board suspend this proceeding with respect to all matters not germane to this motion, including the discovery and testimony periods, pursuant to Trademark Rule of Practice 2.120(e)(2).

CERTIFICATION OF COUNSEL

Pursuant to Trademark Rule of Practice 2.120(e), this motion is made following a good faith attempt by counsel for Opposer to meet and confer on Applicant's failure to provide discovery responses on September 26, 2009, as well as a subsequent email sent on October 6, 2009. (*See* Declaration of James D. Weinberger ("Weinberger Decl."), ¶¶ 10-11 & **Exhs. E & F**.) No response has been received from Applicant. *Id.*

STATEMENT OF FACTS

This opposition was initiated on April 16, 2008. (Weinberger Decl. at ¶ 2.) After various consent motions to extend the original schedule were filed and granted, discovery was scheduled to close on September 18, 2009. (*Id.* at ¶ 2, **Ex. A**).

On June 5, 2009, Opposer served Applicant by first class mail with Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for the Production of Documents and Things to Applicant (collectively, the "Discovery Requests"). (Weinberger Decl. at ¶ 3 & **Ex. B**.) Applicant's responses to the Discovery Requests were due on or before July 10, 2009. (*Id.*) On July 3, 2009, Applicant (through its counsel) contacted Opposer requesting a 60-day extension to respond to the Discovery Requests. (*Id.* at ¶ 4, **Ex. C**. at pp.2-3) Opposer consented to a 30-day extension, making Applicant's responses due on or before August 10, 2009. (*Id.*)

On August 5, 2009, Applicant contacted Opposer stating that Applicant had had a "change of personnel" and that the new "person in charge of Applicant" was seriously

considering the terms of a co-existence agreement that been earlier proposed by Opposer. (Weinberger Decl. ¶5 & **Ex. C** at p.2.) In light of this development, Applicant requested an additional 30-day extension to respond to the Discovery Requests. (*Id.*)

Rather than agree to another 30-day extension outright, Opposer proposed (and Applicant agreed to) the following terms: First, the parties would agree to suspend this proceeding for 30 days, provided that Applicant contacted Opposer by August 19, 2009 with a substantive response to the proposed co-existence agreement. Second, in the event the parties could not agree on a co-existence agreement by the September 6, 2009 (the day proceedings would resume), Applicant's responses to the Discovery Requests would be due on September 11, 2009 (five days following the resumption of proceedings.) (Weinberger Decl. at ¶6, **Ex. C** at p. 1.) Applicant's agreement to respond to the Discovery Requests by September 11, 2009 was an express condition to Opposer's agreeing to suspend the proceedings. (*Id.*) Finally, the parties agreed to extend the close of discovery until October 19, 2009. (*Id.*) Based on Applicant's agreement to these terms, Opposer filed its consented motion to suspend the proceedings, which was granted a few days later. (*Id.* at ¶7, **Ex. D.**)

Applicant did not provide Opposer with any response (much less a substantive response) to the terms of the proposed co-existence agreement. (Weinberger Decl. at ¶8.) Accordingly, the proceedings resumed on September 6, 2009 and Applicant's responses to the Discovery Requests were due on September 11, 2009. Applicant did not respond to the Discovery Requests on September 11, 2009 and, to date, has still provided no response to the Discovery Requests. (*Id.* at ¶ 9.)

In an email sent on September 29, 2009, Opposer's counsel inquired when Applicant would be serving its responses and informed Applicant that it had waived any objections to the

Discovery Requests. In this same email, Opposer requested a meet and confer on Opposer's intended motion to compel Applicant to respond to the Discovery Requests. (Weinberger Decl. at ¶ 10 & **Ex. E.**) No response was received. (*Id.*) The following week, another email was sent to Applicant's counsel inquiring about Applicant's failure to timely provide responses and again requesting a meet and confer. (*Id.* at ¶ 11 & **Ex. F.**) Again, no response was received. (*Id.*)

Indeed, to date, Opposer's counsel has not received *any* response from Applicant or its counsel. Nor has Opposer's counsel received any written responses to the Discovery Requests or any explanation for Applicant's delay or for its failure to timely respond to the Discovery Requests. Finally, to date, Applicant has not offered to cure its discovery deficiencies by providing written responses and documents. (Weinberger Decl. at ¶12.)

ARGUMENT

A. Applicant Has Waived Its Objections

"A party which fails to respond to a request for discovery during the time allowed therefor, and which is unable to show excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on the merits." TBMP §§ 403.03 at 400–10, 405.04 at 400–44–45, 406.04 at 400–50; *see also No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (T.T.A.B. 2000); *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 449 (T.T.A.B. 1979).

Here, despite being properly served with the Discovery Requests, despite having been granted an extension of time to respond, and despite being aware of the September 11, 2009 deadline for responding, Applicant chose not to respond. Applicant has given no excuse for failing to respond to the Discovery Requests. Consequently, Applicant cannot show neglect, let

alone the excusable neglect required by the Board, to excuse its conduct. As such, Applicant has forfeited its right to object to any of the discovery requests served.

Accordingly, Opposer requests that the Board issue an order to the effect that Applicant has waived its objections to the Discovery Requests and further requiring that Applicant respond fully and without objection to Opposer's Interrogatories and Opposer's Document Requests (including providing copies of all of the requested documents) within **ten (10) days** of the Board's order.

B. The Relief Sought Would Prevent Prejudice To Opposer Created By Applicant

In order to preserve the opportunity to take follow-up discovery in the event it became necessary, Opposer served its discovery early in the discovery period (*i.e.*, more than 3 months in advance of the close of discovery). *See* TBMP § 403.05(a). Applicant's unilateral decision to ignore the deadline for responding has resulted in Opposer's being denied the chance to serve follow-up discovery or to even take a deposition. Opposer should not suffer prejudice in this way by the improper acts of Applicant. Therefore, Opposer requests that the Board reset Opposer's discovery period such that it closes at least thirty (30) days after Opposer's receipt of discovery responses that fully comply with the Board's order (assuming such compliance even occurs), thereby preserving for Opposer the opportunity for follow-up.

This is not a case where it is appropriate for the Board to simply extend all dates as to all parties. To extend Applicant's discovery period would reward Applicant for its failure to comply with the discovery deadlines in this case. Applicant has served *no* discovery requests to date, and has given up certain rights as a result, namely the ability to obtain follow-up discovery since responses to any discovery served by Applicant at this late date would be due well after the

discovery period as originally set by the Board expires. Any extension of Applicant's discovery period would give it a second chance to take discovery at Opposer's expense and burden.

**C. Judgment Should Be Entered Against Applicant
In The Event It Engages In Further Misconduct**

Where a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may enter appropriate sanctions, as defined in Trademark Rule 2.120(g)(1). *See* TBMP § 527. Such sanctions include entering judgment against the non-complying party. *Id.* The Board has held that “although default judgment is a harsh remedy it is justified where no less drastic remedy would be effective and there is a strong showing of willful evasion.” *Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341, 344 (T.T.A.B. 1984).

Here, in the event that Applicant again fails to respond to the Discovery Requests by the deadline set by the Board in its order on this motion, the only effective remedy available is entry of judgment against Applicant and in Opposer's favor. If Applicant defies the Board's order to respond to the outstanding Discovery Requests and judgment is not entered against Applicant, Opposer will be forced to pursue the opposition without the benefit of discovery. To give Applicant the opportunity to thwart discovery rules under such circumstances subverts the entire opposition process.

D. This Proceeding Should Be Suspended During the Pendency of the Instant Motion

Opposer further requests that the Board suspend this proceeding with respect to all matters not germane to this motion pursuant to Trademark Rules of Practice 2.120(e)(2).

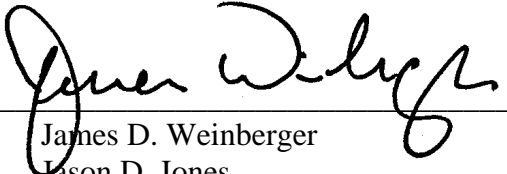
CONCLUSION

For the reasons stated herein, Opposer respectfully requests that the Board enter an order: (1) holding that Applicant has waived its objections to Opposer's first set of Discovery Requests;

(2) compelling Applicant to respond to Opposer's interrogatories and document requests (including through the production of all responsive documents) without objection within ten days of the Board's order; and (3) ordering that judgment will be entered against Applicant as a discovery sanction should it fail to fully comply with the Board's order.

Dated: New York, New York
October 14, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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Jason D. Jones

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Attorneys for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

YOUNG & CO.'S BREWERY, PLC,

Opposer,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.

Applicant.

Opposition No. 91183588

DECLARATION OF JAMES D. WEINBERGER

1. I am a member of the law firm of Fross Zelnick Lehrman & Zissu, P.C., counsel for Opposer Young & Co.'s Brewery, plc ("Opposer"). I submit this declaration in support of Opposer's Motion to Compel.

2. This opposition was initiated on April 16, 2008. A true and correct copy of the most recent consented motion to extend time (and the Board's Order granting the motion) are attached as **Exhibit A**. Under this Order, discovery was scheduled to close on September 18, 2009.

3. On June 5, 2009, Opposer served Applicant by first class mail with Opposer's First Set of Interrogatories to Applicant and Opposer's First Set of Requests for the Production of Documents and Things to Applicant (collectively, the "Discovery Requests"). Applicant's responses to the Discovery Requests were due on or before July 10, 2009. A true and correct copy of these requests is attached as **Exhibit B**.

4. On July 3, 2009, Applicant (through its counsel) contacted Opposer requesting a 60-day extension to respond to the Discovery Requests. Opposer consented to a 30-day

extension, making Applicant's responses due on or before August 10, 2009. A true and correct copy of this email exchange is attached as **Exhibit C**.

5. On August 5, 2009, Applicant contacted Opposer stating that Applicant had had a "change of personnel" and that the new "person in charge of Applicant" was seriously considering the terms of a co-existence agreement that been earlier proposed by Opposer. In light of this development, Applicant requested an additional 30-day extension to respond to the Discovery Requests. A true and correct copy of this email exchange is attached as **Exhibit C**.

6. Rather than agree outright to another 30-day extension, Opposer proposed (and Applicant agreed to) the following terms: (1) the parties would agree to suspend the proceeding for 30 days, provided that Applicant contacted Opposer by August 19, 2009 with a substantive response to the proposed co-existence agreement; (2) in the event the parties could not agree on a co-existence agreement by the September 6, 2009 (the day proceedings would resume), Applicant's responses to the Discovery Requests would be due on September 11, 2009 (five days following the resumption of proceedings); (3) Applicant's agreement to respond to the Discovery Requests by September 11, 2009 was an express condition to Opposer's agreeing to suspend the proceedings; and (4) the parties agreed to extend the close of discovery until October 19, 2009. A true and correct copy of this email exchange is attached as **Exhibit C**.

7. Based on Applicant's agreement to these terms, Opposer filed its consented motion to suspend the proceedings, which was granted a few days later. A true and correct copy of the consented motion to suspend (and the Board's Order granting to motion) are attached as **Exhibit D**.

8. Applicant did not provide Opposer with any response to the terms of the proposed co-existence agreement on or before August 19, 2009.

9. Applicant also did not respond to the Discovery Requests on September 11, 2009.

10. In an email sent on September 29, 2009, I inquired when Applicant would be serving its responses and informed Applicant that it had waived any objections to the Discovery Requests. In this same email, I requested a meet and confer on Opposer's intended motion to compel Applicant to respond to the Discovery Requests. A true and correct copy of this email is attached as **Exhibit E**. No response was received to that email.

11. The following week, I sent another email to Applicant's counsel inquiring about Applicant's failure to timely provide responses and again requesting a meet and confer. A true and correct copy of this email is attached as **Exhibit F**. No response was received to that email.

12. To date, we have not received any response from Applicant or its counsel on the status of discovery. Nor have we received any written responses to the Discovery Requests, or any explanation for Applicant's delay or for its failure to timely respond to the Discovery Requests. To date, Applicant has not offered to cure its discovery deficiencies by providing written responses and documents.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October, 2009.

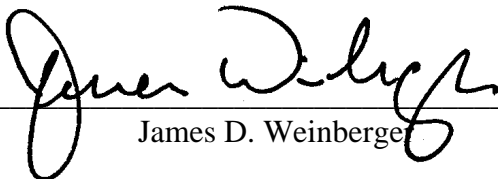

James D. Weinberger

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

January 21, 2009

PROCEEDING NO. 91183588
Young & Co.'s Brewery Plc, Young
& Co.'s Brewery, plc

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.
PLIANCES CO., LTD.

MOTION TO EXTEND GRANTED

By the Board:

Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc's
consent motion to extend, filed Jan 21, 2009, is granted. Dates
are reset as set out in the motion.

.oOo.



Electronic System for Trademark Trials and Appeals

Receipt

Your submission has been received by the USPTO.
 The content of your submission is listed below.
 You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA261647**

Filing date: **01/21/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91183588
Applicant	Plaintiff Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc
Other Party	Defendant SHANDONG JOYOUNG HOUSEHOLD ELECTRICAL APPLIANCES CO., LTD. PLIANCES CO., LTD.

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 06/20/2009. Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc requests that such date be extended for 90 days, or until 09/18/2009, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	08/19/2009
Discovery Closes :	09/18/2009
Plaintiff's Pretrial Disclosures :	11/02/2009
Plaintiff's 30-day Trial Period Ends :	12/17/2009
Defendant's Pretrial Disclosures :	01/01/2010
Defendant's 30-day Trial Period Ends :	02/15/2010

Plaintiff's Rebuttal Disclosures : 03/02/2010

Plaintiff's 15-day Rebuttal Period Ends : 04/01/2010

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*

Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Young & Co.'s Brewery Plc, Young & Co.'s Brewery, plc has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/VANESSA LUI/

Vanessa Lui

lui-docket@fzly.com

kchow@chinahk-ip.com

01/21/2009

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EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/224,334

For the Mark: JOYOUNG in Class 32

In the Matter of Application Serial No. 77/224,336

For the Mark: JOYOUNG in Class 43

YOUNG & CO.'S BREWERY, PLC,

Opposer,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.

Applicant.

Opposition No. 91183588

**OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer Young & Co.'s Brewery, plc, hereby requests that Applicant Shandong Joyoung Household Electrical Appliances Co., Ltd. respond to the following requests for production of documents and things by producing written responses, and by producing those documents and things specified herein, within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure, at the offices of Opposer's attorneys, Attn.: James Weinberger, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017, or at another time and place to be mutually agreed upon by the parties.

DEFINITIONS AND INSTRUCTIONS

A. The term "Applicant," "you" or "your" means Shandong Joyoung Household Electrical Appliances Co., Ltd. and any division, parent, subsidiary, affiliate, licensee,

franchisee, predecessor in interest, successor, assignee, other related business or any other business you control, and the predecessors of any of them and every officer, employee, agent, attorney or other person acting or purporting to act on their behalf.

B. The term “Opposer” means Young & Co.’s Brewery, plc, and any division, parent, subsidiary, affiliate, licensee, franchisee, successor, predecessor in interest, assignee or other related business entity, and the predecessors of any of them and every officer, employee, agent, attorney or other person acting or purporting to act on their behalf.

C. The term “Opposer’s Mark” shall mean Opposer’s YOUNG’S mark as historically used by Opposer and as set forth in U.S. Trademark Registration No. 2,041,589 for “beer, ale, stout” and in U.S. Trademark Registration No. 3,283,581 “beers.”

D. The term “the Applications” shall mean, collectively, Application Serial No. 77/224,334 filed by Applicant to register the mark JOYOUNG for “soy-based beverages not being milk substitutes; colas; vegetable juices; fruit punch; distilled drinking water; seltzer water; and beer” in International Class 32 and Application Serial No. 77/224,336 filed by Applicant to register the mark JOYOUNG for “hotels; restaurants; cafeterias; bar services; tea rooms; cafés; motels; retirement homes; nurseries; and day care centers” in International Class 43.

E. The term “Applicant’s Mark” shall mean Applicant’s purported JOYOUNG mark as set forth in the Applications.

F. The term “Opposed Goods and Services” shall mean, collectively, “beer” in International Class 32 and “restaurants, cafeterias, bar services, and cafés” in International Class 43, as listed in the Applications.

G. The terms “mark,” “trademark” and “trade name” each incorporate trademarks, service marks, trade names and service names.

H. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

I. The term “document” shall include, without limitation, the items set forth in Federal Rule of Civil Procedure 34, as well as any tangible thing in Applicant’s possession, custody or control, or of which Applicant has knowledge, wherever located, whether sent or received or neither, whether an original or a copy, including, without limitation, emails, files maintained in an electronic format on a computer or on any storage device, correspondence, memoranda, printed matter, reports, records, notes, calendars, diaries, telegrams, telexes, studies, market surveys, market research, tabulations, contracts, invoices, receipts, vouchers, registrations, books of account or financial records, notes, advertisements, trademark search reports, directories, publications, computer tapes and printouts, microfilms or the like, and photographs. In all cases where originals and/or non-identical copies are not available, the term “document” also means identical copies of original documents and copies of non-identical copies.

J. The term “Market Research” as used herein includes all surveys, polls, focus groups, market research studies and other investigations conducted by or on behalf of Applicant, whether or not such investigations were completed, discontinued or fully carried out.

K. Whenever the terms “and” or “or” are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of these discovery requests responses that might otherwise be construed to be outside the scope.

L. The use of the singular form of any word includes the plural and vice versa. References to the masculine gender shall apply equally to the feminine gender.

M. Unless otherwise stated, all requests apply to activities in or in connection with the United States.

N. In answering these requests, even though the questions may be directed to “you,” furnish all information that is available to you, including information in the possession of your attorneys or investigators that has been prepared on your behalf.

O. If Applicant objects to furnishing documents in response to any request, or any part or portion thereof, Applicant should specifically state the basis of such objection, identify the documents to which each objection applies, and furnish all requested documents to which the objection does not apply.

P. If Applicant asserts a claim of privilege in objecting to any document request, or part or portion thereof, and documents are withheld on the basis of such assertion:

(i) the attorney asserting the privilege shall, as a part of the objection to the document request, or part or portion thereof, identify the nature of the privilege that is being claimed, and, if the privilege is being asserted in connection with a claim or a defense governed by state law, indicate the state rule of privilege being invoked; and

(ii) the following information shall be provided in the objection unless divulgence of such information would cause disclosure of the allegedly privileged information:

(a) the type of document; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other, as well as all other recipients of the document.

Q. Any objection to any request for which a basis has not been specifically stated within the time provided by the Federal Rules of Civil Procedure shall be waived.

R. For the convenience of the Board and the parties, you are requested to order and label the materials produced in accordance with Federal Rule of Civil Procedure 34(b)(i). Electronically-stored information shall be produced in native format on CD-or DVD-ROM.

S. These requests are intended to be continuing. If at any time after you prepare and furnish the requested discovery you ascertain or acquire additional information, you are requested to produce such supplemental information to Applicant within thirty (30) days.

DOCUMENT REQUESTS

Request No. 1:

All documents identified in response to Opposer's First Set of Interrogatories to Applicant.

Request No. 2:

Any documents identified in Applicant's Initial Disclosures.

Request No. 3:

All documents concerning Applicant's selection, creation, adoption, development, and first use or intended first use of Applicant's Mark.

Request No. 4:

All documents concerning Applicant's bona fide intent to use Applicant's Mark on beer in the United States.

Request No. 5:

All documents concerning Applicant's bona fide intent to use Applicant's Mark for restaurants, bar services, cafés, or cafeterias in the United States.

Request No. 6:

All trademark search reports conducted or caused to be conducted by or on behalf of Applicant concerning Applicant's Mark, and all correspondence and other documents concerning any such trademark searches.

Request No.7:

All trademark search reports conducted or caused to be conducted by or on behalf of Applicant concerning Opposer's Mark, and all correspondence and other documents concerning any such trademark searches.

Request No. 8:

All documents (including, without limitation, any final or non-final office action or other correspondence from any government office responsible for the registration of trademarks) concerning the Applications or any other application by Applicant to register Applicant's Mark as a trademark in any jurisdiction.

Request No. 9:

All documents concerning any likelihood of confusion between Applicant's Mark and Opposer's Mark.

Request No. 10:

All documents concerning any and all instances of actual confusion as to (i) the source, sponsorship or affiliation of the Opposed Goods and Services sold under Applicant's Mark, (ii) the source, sponsorship or affiliation of Opposer's goods, or (iii) the relationship between Applicant and Opposer, that have occurred as a result of Applicant's use or intended use of Applicant's Mark.

Request No. 11:

(a) Documents sufficient to show the types of consumers and end-users to whom Applicant markets, sells or intends to market or sell the Opposed Goods and Services under Applicant's Mark, and documents sufficient to show the types of consumers, if any (including demographics), who have actually purchased the Opposed Goods and Services under Applicant's Mark; and

(b) all Market Research concerning the same.

Request No. 12:

All documents evidencing or otherwise concerning the earliest date upon which Applicant intends to rely in this proceeding with respect to its use, if any, of Applicant's Mark.

Request No. 13:

All documents concerning any agreement (e.g., manufacturing, distribution and license agreements) pursuant to which the Opposed Goods and Services offered under Applicant's Mark are currently, or are intended to be, manufactured, distributed, advertised or sold.

Request No. 14:

All documents concerning any formal or informal complaint, objection, opposition or cancellation proceeding, or civil action concerning Applicant's use of, intention to use, application to register, or registration of Applicant's Mark, whether brought by or against Applicant.

Request No. 15:

All correspondence with any regulatory body or agency, within or outside of the United States, including without limitation the United States Food and Drug Administration, concerning the selection, adoption, or use of Applicant's Mark.

Request No. 16:

All Documents concerning Market Research whether conducted for marketing purposes, litigation purposes, or other purposes, which relates or refers to Applicant's Mark, including, without limitation, any recognition thereof among consumers, end-users or the trade.

Request No. 17:

All documents concerning Market Research that relates or refers to Opposer's Mark.

Request No. 18:

All documents concerning Market Research that relates or refers to any likelihood of confusion or likelihood of dilution between Opposer's Mark and Applicant's Mark.

Request No. 19:

Documents sufficient to show all channels of advertising or intended channels of advertising for the Opposed Goods and Services offered under Applicant's Mark including, without limitation:

- (a) marketing plans prepared by and correspondence with any advertising agency concerning Applicant's Mark;
- (b) representative samples of advertising, catalogs, press releases, brochures and other promotional materials used or intended to be used by or on behalf of Applicant in connection with the sale, distribution or promotion of the Opposed Goods and Services offered under Applicant's Mark;
- (c) documents sufficient to identify all types of media (e.g., radio, television, newspaper, Internet, etc.) and 10 representative samples of the media outlets (e.g. *Time Magazine*, www.cnn.com) within each specific medium through which Applicant has or intends to market the Opposed Goods and Services offered under Applicant's Mark;

(d) documents (including, without limitation, financial, accounting and corporate records) sufficient to show Applicant's expenditures incurred in connection with advertising and marketing of the Opposed Goods and Services offered under Applicant's Mark, including, without limitation, documents showing such expenditures for each month and year from the date of the filing of the Applications to the present;

(e) all marketing plans concerning Applicant's Mark for use in connection with the Opposed Goods and Services, including, without limitation (i) marketing plans prepared in-house by Applicant, and (ii) marketing plans prepared by any advertising agency concerning the Opposed Goods and Services to be sold or marketed under Applicant's Mark;

(f) documents sufficient to identify any outside advertising or marketing or other promotional agency that has provided services for Applicant in connection with Applicant's offering of or intention to offer the Opposed Goods and Services under Applicant's Mark; and

(g) all third-party media mentions (such as magazine stories) concerning Applicant's Mark in connection with the Opposed Goods and Services.

Request No. 20:

Documents sufficient to show the wholesale and retail prices of each of the Opposed Goods and Services Applicant has sold or intends to sell under Applicant's Mark.

Request No. 21:

All invoices and purchase orders for the Opposed Goods and Services offered for sale under Applicant's Mark for each month during which such sales, if any, have taken place.

Request No. 22:

Documents sufficient to show how Applicant presents or intends to present Applicant's Mark to consumers and end-users in connection with the Opposed Goods and Services.

Request No. 23:

Documents sufficient to show the channels of trade through which Applicant offers, sells or plans to offer or sell the Opposed Goods and Services under Applicant's Mark, including, without limitation, all correspondence between Applicant and any agents that have sold, offered or communicated about the possibility of selling or offering the Opposed Goods and Services under Applicant's Mark.

Request No. 24:

Samples or photographs of each type of good on which Applicant's Mark is used or intended to be used showing every place on each such good where Applicant's Mark appears or shall appear.

Request No. 25:

- (a) All trademark watch notices concerning Opposer's Mark; and
- (b) All documents concerning Applicant's first awareness of Opposer's Mark.

Request No. 26:

All documents concerning any expert Applicant intends to call or have testify on its behalf, including, without limitation, all correspondence with such person, all articles such person has written in the last 5 years, and a list of all cases in which such person has testified in the last 4 years.

Request No. 27:

All Documents Applicant intends to rely upon in connection with this proceeding.

Request No. 28:

All documents concerning any and all licenses, assignments, or consents to use Applicant's Mark.

Request No. 29:

All documents concerning Opposer or Opposer's Mark.

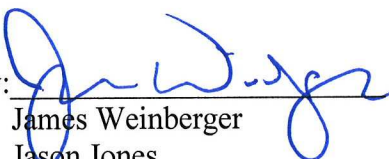
Request No. 30:

Documents sufficient to show Applicant's document retention policy, if any.

Dated: New York, New York
June 5, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:


James Weinberger

Jason Jones

866 United Nations Plaza

New York, New York 10017

Tel: (212) 813-5900

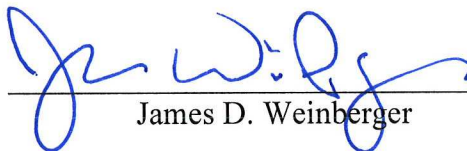
Fax: (212) 813-5901

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2009, a true and correct copy of the foregoing **Opposer's First Set of Requests for the Production of Documents and Things to Applicant** was served on Applicant by prepaid first-class mail by sending a copy to Applicant's attorney of record in the above-captioned proceeding at the address indicated below:

ERIC CHAN
42 PIN OAK DR
PHOENIXVILLE, PA 19460-1145
UNITED STATES



James D. Weinberger

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/224,334
For the Mark: JOYOUNG in Class 32
In the Matter of Application Serial No. 77/224,336
For the Mark: JOYOUNG in Class 43

YOUNG & CO.'S BREWERY, PLC,

Opposer,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.

Applicant.

Opposition No. 91183588

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer Young & Co.'s Brewery, plc, hereby requests that Applicant Shandong Joyoung Household Electrical Appliances Co., Ltd. answer the following interrogatories by serving written responses thereto at the offices of Opposer's attorneys, Attn.: James Weinberger, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017 within the time specified by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

A. The term "Applicant," "you" or "your" means Shandong Joyoung Household Electrical Appliances Co., Ltd. and any division, parent, subsidiary, affiliate, licensee, franchisee, predecessor in interest, successor, assignee, other related business or any other

business you control, and the predecessors of any of them and every officer, employee, agent, attorney or other person acting or purporting to act on their behalf.

B. The term “Opposer” means Young & Co.’s Brewery, plc, and any division, parent, subsidiary, affiliate, licensee, franchisee, successor, predecessor in interest, assignee or other related business entity, and the predecessors of any of them and every officer, employee, agent, attorney or other person acting or purporting to act on their behalf.

C. The term “Opposer’s Mark” shall mean Opposer’s YOUNG’S mark as historically used by Opposer and as set forth in U.S. Trademark Registration No. 2,041,589 for “beer, ale, stout” and in U.S. Trademark Registration No. 3,283,581 for “beers.”

D. The term “the Applications” shall mean, collectively, Application Serial No. 77/224,334 filed by Applicant to register the mark JOYOUNG for “soy-based beverages not being milk substitutes; colas; vegetable juices; fruit punch; distilled drinking water; seltzer water; and beer” in International Class 32 and Application Serial No. 77/224,336 filed by Applicant to register the mark JOYOUNG for “hotels; restaurants; cafeterias; bar services; tea rooms; cafés; motels; retirement homes; nurseries; and day care centers” in International Class 43.

E. The term “Applicant’s Mark” shall mean Applicant’s purported JOYOUNG mark as set forth in the Applications.

F. The term “Opposed Goods and Services” shall mean, collectively, “beer” in International Class 32 and “restaurants, cafeterias, bar services, and cafés” in International Class 43, as set forth in the Applications.

G. The terms “mark,” “trademark” and “trade name” each incorporate trademarks, service marks, trade names and service names.

H. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

I. The term “document” shall include, without limitation, the items set forth in Federal Rule of Civil Procedure 34, as well as any tangible thing in Applicant’s possession, custody or control, or of which Applicant has knowledge, wherever located, whether sent or received or neither, whether an original or a copy, including, without limitation, emails, files maintained in an electronic format on a computer or on any storage device, correspondence, memoranda, printed matter, reports, records, notes, calendars, diaries, telegrams, telexes, studies, market surveys, market research, tabulations, contracts, invoices, receipts, vouchers, registrations, books of account or financial records, notes, advertisements, trademark search reports, directories, publications, computer tapes and printouts, microfilms or the like, and photographs. In all cases where originals and/or non-identical copies are not available, the term “document” also means identical copies of original documents and copies of non-identical copies.

J. The term “Market Research” as used herein includes all surveys, polls, focus groups, market research studies and other investigations conducted by or on behalf of Applicant, whether or not such investigations were completed, discontinued or fully carried out.

K. The term “identify” when used in reference to:

(i) a current employee of Applicant means to state his full name, the name and address of his employer, his present title or position, and the address at which he is currently employed;

(ii) a former employee of Applicant means to state, to the extent known, his full name, residence address, last title or position with Applicant, and his present business affiliation and address;

(iii) any other person means to state, to the extent known, the person's full name, present or last known address, and the current or last known place of employment and business address;

(iv) an oral communication means to describe the date and time of the communication, the place where the communication occurred, the persons involved in the communication, any other person present, and the substance of the communication;

(v) a business entity or institution means to state, to the extent known, its full name and address;

(vi) a document means to describe specifically the document, including, where applicable, the subject matter of the document, its date, the name, title and address of each writer or sender and each recipient, its present location and custodian, and, if any such document is not in Applicant's possession or subject to its control, state what disposition was made of it, by whom, and the date thereof. A copy of the document may be furnished in lieu of identifying it, provided the document contains the above information or Applicant separately furnishes the above information when furnishing the document.

L. The term "describe," with respect to communications, shall mean to state or identify the date, time of day, duration, location, persons involved, witnesses, physical occurrences, and a summary of the substance of any conversations. With respect to documents, "describe" shall mean to identify the type of document, its date, its author, its recipients, and to provide a summary of the substance thereof.

M. Whenever the terms "and" or "or" are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of these discovery requests responses that might otherwise be construed to be outside the scope.

N. The use of the singular form of any word includes the plural and vice versa.

References to the masculine gender shall apply equally to the feminine gender.

O. Unless otherwise stated, all interrogatories apply to activities in or in connection with the United States.

P. In answering these interrogatories, even though the questions may be directed to “you,” furnish all information that is available to you, including information in the possession of your attorneys or investigators that has been prepared or assembled on your behalf. If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the information, state an answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

Q. To the extent that any of the following interrogatories may call for information subject to a claim of privilege (including attorney work product protection), answer so much of each interrogatory and each part thereof as does not request privileged information. With respect to those portions of these interrogatories which do request privileged information, set forth the basis for your claim of privilege or any other objection you may have.

R. Any objection to any interrogatory for which a basis has not been specifically stated within the time provided by the Federal Rules of Civil Procedure shall be waived.

S. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

T. These interrogatories are intended to be continuing. If at any time after you prepare and furnish the requested discovery you ascertain or acquire additional information, you are requested to produce such supplemental information to Opposer within thirty (30) days.

INTERROGATORIES

Interrogatory No. 1:

Describe in detail how Applicant currently uses or intends to use Applicant's Mark on the Opposed Goods and Services.

Interrogatory No. 2:

Identify all goods or services Applicant currently offers or intends to offer in the United States under Applicant's Mark.

Interrogatory No. 3:

(a) Identify the earliest date upon which Applicant intends to rely in this proceeding with respect to its use, if any, of Applicant's Mark, and state the basis for relying on such date; and

(b) for each of the goods or services identified in Interrogatory No. 2, identify all facts and identify all documents concerning Applicant's first use, if any, of Applicant's Mark in commerce.

Interrogatory No. 4

Set forth in detail the basis for Applicant's bona fide intent to use Applicant's Mark on beer in the United States.

Interrogatory No. 5

Set forth in detail the basis for Applicant's bona fide intent to use Applicant's Mark for restaurants, bar services, cafés, and cafeterias in the United States.

Interrogatory No. 6:

Identify the types of consumers and end-users (including demographics) to whom Applicant markets and intends to market the Opposed Goods and Services under Applicant's Mark.

Interrogatory No. 7:

Identify in detail the geographical locations (e.g., states, cities) within the United States where the Opposed Goods and Services under Applicant's Mark are offered for sale or where Applicant plans to offer them for sale in the future.

Interrogatory No. 8:

For each geographical area identified in response to Interrogatory No. 7, identify the date or intended date of first use and manner of first use, if any, of Applicant's Mark in that geographical location.

Interrogatory No. 9:

Describe all channels of trade through which Applicant offers for sale or intends to offer for sale the Opposed Goods and Services under Applicant's Mark.

Interrogatory No. 10:

For each of the Opposed Goods and Services you sell or intend to sell under Applicant's Mark, identify the type of media (e.g., brochures, television commercials, radio, newspaper, magazine, Internet, point-of sale materials, etc.) and 10 representative samples of the media outlets (e.g. *Time Magazine*, www.cnn.com) within each specific medium through which Applicant or any authorized third parties have advertised or intend to advertise and promote these goods and/or services.

Interrogatory No. 11:

Identify all events or trade shows at which Applicant has utilized or plans to promote the Opposed Goods and Services under Applicant's Mark.

Interrogatory No. 12:

Identify each person and organization (e.g., advertising agencies, marketing firms) that has participated or plans to participate in the promotion of the Opposed Goods and Services you sell or intend to sell under Applicant's Mark.

Interrogatory No. 13:

State the amount of money Applicant has spent and plans to spend on advertising and promotion of the Opposed Goods and Services under Applicant's Mark, on both a monthly and an annual basis for each month and year, starting with the filing date of the Applications and continuing for the next two years.

Interrogatory No. 14:

State Applicant's total actual sales to date, if any, on both a monthly and an annual basis (in terms of both dollars and units sold) for each of the Opposed Goods and Services under Applicant's Mark.

Interrogatory No. 15:

Describe how and when Applicant became aware of Opposer's Mark.

Interrogatory No. 16:

(a) Identify all opinions, search reports, or other communications concerning your right to register Applicant's Mark or the existence of possible conflicting marks; and

(b) Set forth all opinions concerning your right to register Applicant's Mark or the existence of possible conflicting marks.

Interrogatory No. 17:

Identify all communications with any regulatory body or agency, within or outside of the United States, including without limitation the United States Food and Drug Administration, concerning the selection, adoption, or use of Applicant's Mark.

Interrogatory No. 18:

Describe each instance of which Applicant is aware in which there has been actual confusion between Applicant and Opposer, or their goods or services, as a result of either party's use of the marks at issue in this Opposition proceeding.

Interrogatory No. 19:

Describe all Market Research Applicant has conducted or plans to conduct concerning Opposer's Mark or Applicant's Mark, whether completed or not, and whether or not prepared in connection with this proceeding.

Interrogatory No. 20:

Identify the persons with most knowledge regarding the following topics:

- (a) the selection of Applicant's Mark;
- (b) Applicant's date of first use or intended use of Applicant's Mark;
- (c) the Opposed Goods and Services offered or intended to be offered under Applicant's Mark; and
- (d) Applicant's sales and promotion or intended sales and promotion of the Opposed Goods and Services under Applicant's Mark.

Interrogatory No. 21:

Identify each person who answered or provided information used in answering the preceding interrogatories, specifying the particular interrogatories for which each such person provided an answer or information.

Interrogatory No. 22:

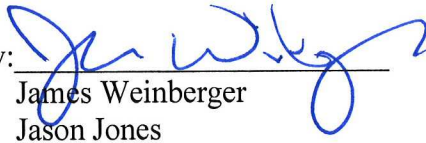
Identify the person most knowledgeable in the United States about the facts stated in response to each of these Interrogatories.

Interrogatory No. 23:

Identify any expert retained in connection with this proceeding, whether or not you intend to rely on the testimony of such expert.

Dated: New York, New York
June 5, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
James Weinberger
Jason Jones

866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900
Fax: (212) 813-5901

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2009, a true and correct copy of the foregoing **Opposer's First Set of Interrogatories to Applicant** was served on Applicant by prepaid first-class mail by sending a copy to Applicant's attorney of record in the above-captioned proceeding at the address indicated below:

ERIC CHAN
42 PIN OAK DR
PHOENIXVILLE, PA 19460-1145
UNITED STATES

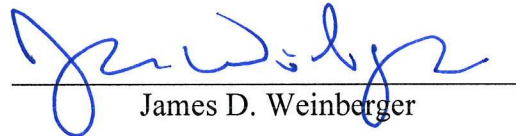

James D. Weinberger

EXHIBIT C

Jason Jones

From: Karen [kchow@chinahk-ip.com]
Sent: Friday, August 07, 2009 3:29 AM
To: James Weinberger
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Importance: High

Dear James,

Thank you for your email. We agree to the two conditions as set out in your email. Please submit the motion to suspend.

Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907
Fax: (852) 2110 9620
Email: kchow@chinahk-ip.com

This communication may contain confidential or privileged information. It is intended only for the use of the addressee(s). If you are not the intended recipient, please contact the sender by reply email and then delete this communication from your system. You should not copy this communication or disclose its contents to anyone.
Thank you.

-----Original Message-----

From: James Weinberger [mailto:jweinberger@fzlz.com]
Sent: Thursday, August 06, 2009 6:59 PM
To: Karen
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Dear Karen -

I heard back quickly. Here is what we will agree to:

(1) A 30 day suspension for settlement, provided that you will get back to us within two weeks (i.e., by August 19, 2009) with a substantive response to the coexistence proposal.

(2) The suspension is conditioned upon your agreement that should we not resolve the matter (or make significant progress at which point we might agree to a further suspension), your client's discovery responses will be due FIVE DAYS following resumption of proceedings (since they are due five days from now).

If you agree to these conditions, I will submit the motion to suspend on consent today. Please advise.

Regards,
James

From: Karen [mailto:kchow@chinahk-ip.com]

10/14/2009

Sent: Wednesday, August 05, 2009 9:24 PM
To: James Weinberger
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
Importance: High

Dear Mr. Weinberger,

We write further to your email of 6 July 2009 as below. As there has been a change of personnel in the Applicant's company, the new person-in-charge of the Applicant is now seriously re-considering the attached terms of co-existence agreement as previously proposed by your client. We should be therefore grateful if you could consent to a further time extension of 30 days up to 8 September 2009 so that the Applicant may have more time to review the terms and thereafter resume the settlement discussion with you.

Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907
Fax: (852) 2110 9620
Email: kchow@chinahk-ip.com

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-----Original Message-----

From: Karen [<mailto:kchow@chinahk-ip.com>]
Sent: Monday, July 06, 2009 9:26 AM
To: 'Karen'
Subject: FW: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

-----Original Message-----

From: James Weinberger [<mailto:jweinberger@fzlz.com>]
Sent: Friday, July 03, 2009 8:01 PM
To: kchow@chinahk-ip.com; Jason Jones
Subject: Re: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

I am the contact for the case. We will consent to a 30 day extension.

James D. Weinberger
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza | New York, NY 10017
(212) 813-5952 (p) | (212) 813-5901 (f)

From: Karen
To: James Weinberger; Jason Jones
Sent: Fri Jul 03 06:56:35 2009
Subject: FW: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
[Dear Mr. Weinberger and Mr. Jones,](#)

I have sent an email to Ms. Vanessa Lui of your office today regarding US opposition no. 91183588 as below. However, I received an auto-reply that Ms. Vanessa Lui is no longer with your office. I found your contact on your firm's website. Please let me know if I should contact you for this case. Thank you.

Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907

Fax: (852) 2110 9620

Email: kchow@chinahk-ip.com

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-----Original Message-----

From: Karen [mailto:kchow@chinahk-ip.com]

Sent: Friday, July 03, 2009 6:36 PM

To: 'Vanessa Lui'

Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Importance: High

Dear Vanessa,

I refer to the above matter under US opposition no. 91183588. We have received your initial disclosures, first set of request for production of documents and things to applicant, and first set of interrogatories to applicant. The due date for the applicant to reply to your requests should be 10 July 2009. However, since the applicant is a Chinese corporation, it needs more time to comprehend the content in your requests, collect the relevant information and prepare the reply to you in English. We should therefore be grateful if you could consent to a 2-month time extension to extend the deadline to 10 September 2009 for the applicant to reply to your requests.

In view of the urgent deadline of 10 July 2009 for the applicant to reply to your requests, please kindly let us have your urgent reply preferably by next Monday.

Look forward to hearing from you!

Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907

Fax: (852) 2110 9620

Email: kchow@chinahk-ip.com

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EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 13, 2009

Opposition No. **91183588**

Young & Co.'s Brewery Plc,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO.,
LTD. PLIANCES CO., LTD.

Rochelle Ricks, Paralegal Specialist:

Because the parties are negotiating for possible settlement of this case, proceedings herein are suspended until September 6, 2009, subject to the right of either party to request resumption at any time. See Trademark Rule 2.117(c).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out in the oppooser's August 7, 2009 motion.

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.

**IN THE TRADEMARK TRIAL AND APPEAL BOARD
OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

YOUNG & CO.'S BREWERY, PLC,

Opposer,

v.

SHANDONG JOYOUNG HOUSEHOLD
ELECTRICAL APPLIANCES CO., LTD.

Applicant.

Opposition No. 91183588

OPPOSER'S MOTION TO SUSPEND OPPOSITION ON CONSENT

Pursuant to 37 CFR § 2.117(c) and TBMP § 510.03, Opposer Young & Co.'s Brewery, PLC ("Opposer") moves to suspend this opposition proceeding for a period of thirty (30) days on the following grounds:

1. The parties are actively engaged in negotiations for the settlement of this matter and Opposer submits that this constitutes good cause of the request.
2. Opposer has secured the express consent of Applicant for the suspension and resetting of dates requested herein.
3. Opposer provides the following e-mail addresses for itself and counsel for Applicant so that any Order on this Consented Motion may be issued electronically by the Board:

James Weinberger, Attorney for Opposer - jweinberger@frosszelnick.com

Karen Chow, Attorney for Applicant - kchow@chinahk-ip.com

WHEREFORE, Opposer respectfully requests that this opposition proceeding be suspended for a period of thirty (30) days, and that all subsequent dates be reset as follows:

Proceedings Resume: 9/6/09

**Applicant's to Serve Responses to
Opposer's Pending Discovery Requests:** 9/11/09¹

Expert Disclosures Due: 9/18/09

Discovery Closes: 10/19/09

Plaintiffs' Pretrial Disclosures: 12/02/09

Plaintiff's 30-day Trial Period Ends: 1/18/10

Defendants' Pretrial Disclosures: 2/1/10

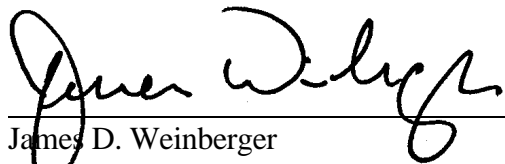
Defendant's 30-day Trial Period Ends: 3/17/10

Plaintiffs' Rebuttal Disclosures: 4/1/10

Plaintiff's 15-day Rebuttal Period Ends: 5/3/10

Dated: New York, New York
August 7, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
James D. Weinberger
Jason Jones
866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900
Email: jweinberger@fzlz.com

Attorneys for Opposer

¹ This deadline is an **express condition** of Opposer's agreement to suspend the proceeding.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2009, a true and correct copy of the foregoing **OPPOSER'S MOTION TO SUSPEND OPPOSITION ON CONSENT** was served on the Applicant's counsel of record, Eric Chan, 42 Pin Oak Dr, Phoenixville, PA 19460-1145 and by electronic mail to kchow@chinahk-ip.com.

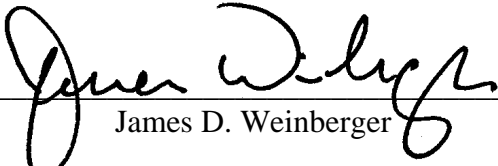

James D. Weinberger

EXHIBIT E

Jason Jones

From: James Weinberger
Sent: Tuesday, September 29, 2009 10:25 AM
To: Karen
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Karen -

I write in reference to the above-referenced matter. We did not hear from you regarding settlement on August 19, 2009 and have not received any discovery responses (which were due on September 11, 2009). As such, your client has waived any objections to discovery. Please advise when we can expect to receive complete responses, along with documents, without any objection (including those responses and documents previously covered by the attorney client privilege). Absent a prompt response, we will have no choice but to move to compel. Please consider this email our attempt to meet and confer on such a motion under the Trademark Rules of Practice.

In the alternative, if your client has decided to abandon its application to register JOYOUNG, we would appreciate the courtesy of its filing an express abandonment of the application.

Please advise.
- James

From: Karen [<mailto:kchow@chinahk-ip.com>]
Sent: Friday, August 07, 2009 3:29 AM
To: James Weinberger
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
Importance: High

Dear James,

Thank you for your email. We agree to the two conditions as set out in your email. Please submit the motion to suspend.

Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907
Fax: (852) 2110 9620
Email: kchow@chinahk-ip.com

This communication may contain confidential or privileged information. It is intended only for the use of the addressee(s). If you are not the intended recipient, please contact the sender by reply email and then delete this communication from your system. You should not copy this communication or disclose its contents to anyone.
Thank you.

-----Original Message-----

From: James Weinberger [<mailto:jweinberger@fzlz.com>]
Sent: Thursday, August 06, 2009 6:59 PM

10/14/2009

To: Karen
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Dear Karen -

I heard back quickly. Here is what we will agree to:

(1) A 30 day suspension for settlement, provided that you will get back to us within two weeks (i.e., by August 19, 2009) with a substantive response to the coexistence proposal.

(2) The suspension is conditioned upon your agreement that should we not resolve the matter (or make significant progress at which point we might agree to a further suspension), your client's discovery responses will be due FIVE DAYS following resumption of proceedings (since they are due five days from now).

If you agree to these conditions, I will submit the motion to suspend on consent today. Please advise.

Regards,
James

From: Karen [mailto:kchow@chinahk-ip.com]
Sent: Wednesday, August 05, 2009 9:24 PM
To: James Weinberger
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
Importance: High

Dear Mr. Weinberger,

We write further to your email of 6 July 2009 as below. As there has been a change of personnel in the Applicant's company, the new person-in-charge of the Applicant is now seriously re-considering the attached terms of co-existence agreement as previously proposed by your client. We should be therefore grateful if you could consent to a further time extension of 30 days up to 8 September 2009 so that the Applicant may have more time to review the terms and thereafter resume the settlement discussion with you.

Best regards,
Karen Chow

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2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907
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EXHIBIT F

Jason Jones

From: James Weinberger
Sent: Tuesday, October 06, 2009 10:05 AM
To: 'Karen'
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Dear Karen - we have not heard from you in response to our meet and confer effort below. If we do not hear from you by 12 noon NY time tomorrow, October 6, we will proceed to prepare and file a motion to compel your client's complete responses to discovery without objection - James

From: James Weinberger
Sent: Tuesday, September 29, 2009 10:25 AM
To: Karen
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Karen -

I write in reference to the above-referenced matter. We did not hear from you regarding settlement on August 19, 2009 and have not received any discovery responses (which were due on September 11, 2009). As such, your client has waived any objections to discovery. Please advise when we can expect to receive complete responses, along with documents, without any objection (including those responses and documents previously covered by the attorney client privilege). Absent a prompt response, we will have no choice but to move to compel. Please consider this email our attempt to meet and confer on such a motion under the Trademark Rules of Practice.

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Please advise.
- James

From: Karen [mailto:kchow@chinahk-ip.com]
Sent: Friday, August 07, 2009 3:29 AM
To: James Weinberger
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
Importance: High

Dear James,

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Best regards,
Karen Chow

China.hk Intellectual Property Services Co., Ltd.
2503-6, 25/F, CC Wu Building, 302-308 Hennessy Road, Hong Kong

10/14/2009

Tel: (852) 2110 9608 / Direct line: (852) 2115 7907
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Thank you.

-----Original Message-----

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Sent: Thursday, August 06, 2009 6:59 PM
To: Karen
Cc: Jason Jones
Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)

Dear Karen -

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Regards,
James

From: Karen [mailto:kchow@chinahk-ip.com]
Sent: Wednesday, August 05, 2009 9:24 PM
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Subject: RE: URGENT: Conflict with Shandong Joyoung (YOUNG'S v. JOYOUNG) (Our Ref. No. YCBR 0800080; Your Ref. No. 17559 & 17561)
Importance: High

Dear Mr. Weinberger,

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Best regards,
Karen Chow

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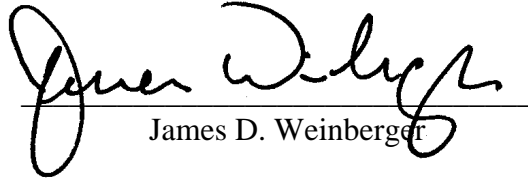
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2009, a true and correct copy of the foregoing **Opposer's Motion to Compel and Declaration of James Weinberger** was served on Applicant by prepaid first-class mail (and email) by sending a copy to Applicant's attorney of record in the above-captioned proceeding at the address indicated below:

ERIC CHAN
42 PIN OAK DR
PHOENIXVILLE, PA 19460-1145
UNITED STATES

KAREN CHOW
CHINA.HK INTELLECTUAL PROPERTY SERVICES CO., LTD.
kchow@chinahk-ip.com


James D. Weinberger